

FILED

JUL 31 2017

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Case No. 16-cv-02642 NC

ELIEL PAULINO,

Plaintiff,

JURY NOTES

v.

MARCO CRUZ, et al.,

Defendants.

/

Jury Notes Nos. 1 through 25 attached.

Dated: July 31, 2017

FOR THE COURT,  
Susan Soong, Clerk

by:



Lili M. Harrell  
Courtroom Deputy

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MAGISTRATE JUDGE NATHANIEL COUSINS

Case No. 16-cv-02642 NC

CASE NAME: **Eliel Paulino v. Marcos Cruz, et al**

NOTE FROM THE JURY

Note No. 1  
Date 7/25/17

Time \_\_\_\_\_

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

*Was there a screen /obstruction (bars)  
on the window that Mr. Paulino's  
father was speaking at ??*

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Foreperson of the Jury

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MAGISTRATE JUDGE NATHANIEL COUSINS

Case No. 16-cv-02642 NC

CASE NAME: **Eliel Paulino v. Marcos Cruz, et al**

NOTE FROM THE JURY

Note No. 2

Date Jul 25

Time 12:14p

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

- 1) What is the standard protocol when there are officer(s) who do not speak the same language as the person they're in contact with?
- 2) Is it standard protocol to apprise an oncoming officer(s) as to results of pat down that's already taken place?
- 3) Is it standard protocol to be able to see both hands at all times?
- 4) If Paulino's right arm was underneath him, how was his arm bloodied from <sup>short shirt</sup> <sub>Foreperson of the Jury</sub> his shirt sleeves down? Was that bruising from baton from short sleeve shirt line down? Silva said "tan line".  
Very hard to discern with lighting. Can this be <sup>tan or</sup> clarified? <sub>bruising</sub>

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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Case No. 16-cv-02642 NC

CASE NAME: **Eliel Paulino v. Marcos Cruz, et al**

NOTE FROM THE JURY

Note No. 3

Date 07/25/17

Time 12:15 PM

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

→ From what I have learned/understand about police dept's & police academies - in general -  
→ Does the extensive training & policies/ protocols; have visual/illustrative examples of baton injuries that are acceptable/correct & ones that are not acceptable/  
incorrect. Foreperson of the Jury → → & how much force is excessive?  
→ [e.g.: photo evidence, mock photos, illustrations & phys. examples.]  
→ Is: video example: typical?

UNITED STATES DISTRICT COURT  
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Case No. 16-cv-02642 NC

CASE NAME: **Eliel Paulino v. Marcos Cruz, et al**

NOTE FROM THE JURY

Note No. 4

Date 7/25/17

Time 12:17 pm

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

Is it standard procedure to document  
injuries present after <sup>an</sup> arrest?

Did you at anytime between leaving  
the patrol car and the time during  
which ~~he was~~ Mr. Paulino was on the  
ground did you <sup>verbally</sup> communicate with  
Officer Silva or Sohal.  
Foreperson of the Jury

If so, what was said.

UNITED STATES DISTRICT COURT  
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Case No. 16-cv-02642 NC

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NOTE FROM THE JURY

Note No. 5

Date 7/25/17

Time 12:15 pm

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

*During the time of the struggle did you instruct Mr. Paulino to take his right arm out in Spanish? Did Mr. Paulino say anything during the struggle?*

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Foreperson of the Jury

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MAGISTRATE JUDGE NATHANIEL COUSINS

Case No. 16-cv-02642 NC

CASE NAME: **Eliel Paulino v. Marcos Cruz, et al**

NOTE FROM THE JURY

Note No. 4

Date 7/26

Time 12:pm

1. The Jury has reached a unanimous verdict ( )

or

② The Jury has the following question:

① Understanding POST /police academy as training and the manuals studied, ~~what~~ what percentage <sup>of the time</sup> does 'reality' match the manual? Is it <sup>reasonable or</sup> unreasonable to think all officers under all circumstances would follow the manual to the letter?

② Is the inexperience of the officers who responded (all 1-2 yrs on the force) a critical factor? In other words, is this a rookie mistake? Or should they have known upon graduation from the Academy? Would a more experienced /senior officer have handled this differently based on acquired experience? Or is this knowledge to be acquired through training only?

Foreperson of the Jury

③ Also is this case here because of an appeal? Why in Federal Court?

④ Why is it being timed?

UNITED STATES DISTRICT COURT  
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Case No. 16-cv-02642 NC

CASE NAME: **Eliel Paulino v. Marcos Cruz, et al**

NOTE FROM THE JURY

Note No. 7

Date 7/26

Time 3:35 pm

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

① As a result of Mr. Paulino's injuries, did that affect his ability to go back to work? How long? Is there permanent damage after the two holes in his elbow?

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Foreperson of the Jury

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MAGISTRATE JUDGE NATHANIEL COUSINS

Case No. 16-cv-02642 NC

CASE NAME: **Eliel Paulino v. Marcos Cruz, et al**

NOTE FROM THE JURY

Note No. 8

Date 7-26-17

Time 3:40

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

For : Mr. Paulino

Did the police officers give you enough time  
between blows to remove your hand from under  
your stomach?

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Foreperson of the Jury

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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Case No. 16-cv-02642 NC

CASE NAME: **Eliel Paulino v. Marcos Cruz, et al**

NOTE FROM THE JURY

Note No. 9

Date 7/27

Time 9:00a

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

- ① Is Eliel right ~~or left~~ handed?
- ② If officers witness excessive force, must they report it? If so, in what timeframe?
- ③ If officers witness excessive force, what are they required to do while it is happening? Are they obligated to make it stop in the moment?

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Foreperson of the Jury

UNITED STATES DISTRICT COURT  
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Case No. 16-cv-02642 NC

CASE NAME: **Eliel Paulino v. Marcos Cruz, et al**

NOTE FROM THE JURY

Note No. 10

Date 7/21

Time \_\_\_\_\_

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

- In Sohols previous testimony, he said he struck Mr. Paulino and then tried to pull out his arm -- not pry it out. Where was his baton at that time?
- On Cadillac Drive, were there any open spots at the curb for him to pull over?
- If all of the parking on the street is taken, is Cadillac Dr wide enough for traffic to move both ways/2 directions?

\_\_\_\_\_  
Foreperson of the Jury

- If you were so concerned about the situation potentially escalating, why didn't you do a full pat search?
- Did you shine the light in Paulino's eyes before or after he told you he was drunk/had been drinking?

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NOTE FROM THE JURY

Note No. 11

Date 7/27

Time \_\_\_\_\_

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

① Is Officer Sohal (Cruz/Silva) still employed with SJPD?

If so, in what capacity?

② What is the effect of this trial - no matter the outcome - on their employment status? or what they'd be assigned to?

③ Given the circumstances of the neighborhood that have been described (i.e. high crime, gang), why did Sohal/Silva have Paulino approach them if unclear on weapon status of Paulino - especially after walking out of a darkened carport they'd been

Foreperson of the Jury

warned might contain stashed weapons?

Why not have Paulino put his hands up against Paulino's car?

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Case No. 16-cv-02642 NC

CASE NAME: Eliel Paulino v. Marco Cruz, et al

NOTE FROM THE JURY

Note No. 12

Date 4/27

Time \_\_\_\_\_

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

Q) why was Cruz the most suitable  
chosen to stand by Paulino?

Q) The moderated search took ~45 sec.  
on video, why didn't you do a trained  
pocket search?

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Foreperson of the Jury

UNITED STATES DISTRICT COURT  
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Case No. 16-cv-02642 NC

CASE NAME: **Eliel Paulino v. Marcos Cruz, et al**

NOTE FROM THE JURY

Note No. 13

Date 7/21

Time \_\_\_\_\_

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

- (1) How often do you perform modified pat downs?
- (2) Why not conduct the full search given the circumstances you described and all of the red flags?
- (3) You mentioned you did not know what the struggle was about or if the officer had been disarmed. Wouldn't you the officer tell you had he been disarmed, or communicated to you what was happening in order to inform you?

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Foreperson of the Jury

UNITED STATES DISTRICT COURT  
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CASE NAME: Eliel Paulino v. Marco Cruz, et al

NOTE FROM THE JURY

Note No. 14

Date 7/27

Time 3:00p

Cameron

① If waist & groin are where  
most weapons hidden, what %  
in waist vs. groin?  
70/30? 50/50? 10/90?

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

Silva

① If you were in Class 19, + Cruz / Sohal in Class 20 at  
Police Academy, how come they were not good candidates for  
versatility?

② Did you / Sohal / Cruz have body cameras on at the time?

③ Have you had drunk people fall down before in a

traffic stop? If so how was that typically handled?

④ In "Redman" module, <sup>you said</sup> officers use a foam baton. In the  
next training module, do people actually get whacked with a baton  
(the same way Sohal got OC <sup>sprayed?</sup>) Who volunteers to get hit?  
(is it other officers?) Do you personally know how an impact of baton  
feels? If so, does that inform your usage of baton?

General

① Silva <sup>written</sup> report came in after he was aware of video -  
what about timing of Sohal's / Cruz's interrupt with respect to knowledge  
of video - before they knew? after?

UNITED STATES DISTRICT COURT  
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Case No. 16-cv-02642 NC

CASE NAME: Eliel Paulino v. Marco Cruz, et al

NOTE FROM THE JURY

Note No. 15

Date 7/27/17

Time 3:08

1. The Jury has reached a unanimous verdict ( )

or

② The Jury has the following question:

For Silra =

- ① What factors led to the decision to not place Mr. Paulino under arrest/in handcuffs and rather ~~first~~ prioritize readiness for field sobriety test despite multiple threats and a unsecure scene? as a symptom
- ② You mentioned "Auditory Exclusion". ~~Did you see the traces of~~ Did you consider that Mr. Paulino may have been experiencing this and that affected his ability to comply with officer demands

Mr. Cameron

Foreperson of the Jury

- ① Where did you observe Officer Silra strike Mr. Paulino in the video.
- ② At what point did you observe Mr. Paulino become a threat before Officer Cruz made contact with him?
- ③ Is it reasonable to say that the downward Control Hold by Officer Cruz required upward movement on the part of his Mr. Paulino in order to be able to release hand?

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NOTE FROM THE JURY

Note No. 16

Date \_\_\_\_\_

Time \_\_\_\_\_

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

For Silva:

1) <sup>Why</sup> ~~How~~ was the interaction between Cruz & Paulino  
considered a fight when Paulino was pinned to the  
ground?

for Cameron:

1) When discussing materials you reviewed, you indicated  
that you reviewed that testimony. Was that from this  
trial or another trial?

2) How do you know that Paulino was struggling with Cruz?  
(Other than trying to retrieve Paulino's right hand)

Foreperson of the Jury

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CASE NAME: Eliel Paulino v. Marco Cruz, et al

NOTE FROM THE JURY

Note No. 17

Date 7/21/17

Time 3:08

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

For officer Silva: When you initially saw the struggle, why not try to help officer Cruz by grabbing Mr. Paulino with your hands first before issuing a baton strike?

For Mr. Cameron: you said it was reasonable for officer Silva to jab the subject with the baton when he saw the other officer struggling with him. Would it ~~not~~ have been reasonable for officer Silva to have used his hands to grab the subject and assist officer Cruz in detaining him that way?

Why use the baton first?

\_\_\_\_\_  
Foreperson of the Jury

UNITED STATES DISTRICT COURT  
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Case No. 16-cv-02642 NC

CASE NAME: Eliel Paulino v. Marco Cruz, et al

NOTE FROM THE JURY

Note No. 18

Date 7/27

Time \_\_\_\_\_

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

② Did you think there was anything significant in the J.R witness testimony?

\_\_\_\_\_  
Foreperson of the Jury

UNITED STATES DISTRICT COURT  
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CASE NAME: Eliel Paulino v. Marco Cruz, et al

NOTE FROM THE JURY

Note No. 19

Date 7/20

Time \_\_\_\_\_

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

- ① You said you could not understand what Mr. Paulino and his father were discussing. Were they speaking loud enough for Officer Silva to hear their conversation?
- ② Mr. Clark said that if you were going to arrest Mr. Paulino, you should have called another officer to stand with you. Why didn't you call another officer?
- ③ Besides your officer training, do you take any other training such as MMA?

Foreperson of the Jury

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Case No. 16-cv-02642 NC

CASE NAME: Eliel Paulino v. Marco Cruz, et al

NOTE FROM THE JURY

Note No. 20

Date 7-28-17

Time 9:20

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

- ① a) Were your commands to Mr. Paulino to remove his hand from under his stomach given in English?  
or officer Sohal  
b) Do you recall if officer Silva gave Mr. Paulino commands to remove his hand from under his stomach in Spanish?
- ② General Question: Where is this cell phone video we keep hearing about? Was it included in the evidence?

Foreperson of the Jury

UNITED STATES DISTRICT COURT  
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Case No. 16-cv-02642 NC

CASE NAME: **Eliel Paulino v. Marco Cruz, et al**

NOTE FROM THE JURY

Note No. 21

Date 7/23/17

Time \_\_\_\_\_

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

① ~~Have you ever taken a Spanish course?~~

② Did you have any forward momentum towards Mr Paulino when attempting to ~~get~~ get a hold of his hand?

~~Initials~~

~~Initials~~

---

Foreperson of the Jury

UNITED STATES DISTRICT COURT  
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Case No. 16-cv-02642 NC

CASE NAME: Eliel Paulino v. Marco Cruz, et al

NOTE FROM THE JURY

Note No. 22

Date 7/28

Time 9:20am

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

General.

- (1) Can we read each officer's written report?  
(2) Can we read plaintiff's written complaint?

Cruz

(1) Is it customary when someone gets whacked with a baton that they recoil in pain?

(2) Using a fellow officer (who has been through the same training and can Foreperson of the Jury adequately role play), would you please demonstrate:

- a) a "standard" arm bar takedown in ideal scenario?  
b) an arm bar takedown where one struggles?  
c) an arm bar takedown with strong active resistance?

(3) Is it reasonable to assume Paulino could not follow orders because he did not understand English?

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NOTE FROM THE JURY

Note No. 23

Date 7/28

Time \_\_\_\_\_

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

① - Did the other officers tell you Mr. Paulino's father tried to come out the window?

② - Have you ever tried to do an arm bar take down with someone who was drunk? ~~Was it a similar~~  
~~Did you~~ Were you able to successfully take that person down?

③ - Is it possible that Mr. Paulino <sup>wasn't pulling away</sup> <sub>Foreperson of the Jury</sub> physically for but thought you were giving direction giving him to move?

UNITED STATES DISTRICT COURT  
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CASE NAME: Eliel Paulino v. Marco Cruz, et al

NOTE FROM THE JURY

Note No. 1 (24)

Date 7/28/17

Time 3:06 pm

1. The Jury has reached a unanimous verdict ( )

or

2. The Jury has the following question:

- 1) Are damages considered taxable income?
- 2) What fee arrangement does Paulino have with his attorney? Does he forfeit a percentage of damages? If so, what percentage?
- 3) Are damages paid by the individual defendants, the SJPD, or an insurance pool?

Jessica Gestaver Erickson  
Foreperson of the Jury

UNITED STATES DISTRICT COURT  
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NOTE FROM THE JURY

Note No. 15

Date Jul 31

Time 1015a

C 1. The Jury has reached a unanimous verdict

or

2. The Jury has the following question:

Jessica Erickson  
Foreperson of the Jury